

KOSNAN v. PHUA HUAT CHOY

[O.C.J. (Winslow J.) May 23, 1966]

[Singapore — Suit No. 1038 of 1965]

Negligence — Whether fact that car is driven with off-wheels a little over centre of road indicative of negligence.

In this case the facts were shortly that the plaintiff who was riding a scooter swerved to the right to avoid a man dashing across the road and collided with a lorry coming in the opposite direction. The facts as found by the trial judge indicated that the lorry was on its side of the road, or, if at all, was slightly on the plaintiff's side.

Held: (1) the fact that the lorry was slightly over the centre of the road did not necessarily indicate negligence as it was clear that the lorry would have avoided any collision with vehicles coming in the opposite direction even in such circumstances;

(2) in this case the sole cause of the collision was the behaviour of the plaintiff in swerving to his right into the path of the lorry.

Case referred to:—

(1) *Kirk v. Parker* 60 Ll.L.R. 129.

CIVIL SUIT.

Philip Lau for the plaintiff.

Tan Tee Seng for the defendant.

Cur. Adv. Vult.

Winslow J.: As is usual in cases of this nature, I have before me only the evidence of the plaintiff scooter rider, the defendant lorry driver, and a traffic police sergeant who made a sketch plan soon after the incident, as to how the collision occurred.

The handle-bar of the scooter had come off and its front head-lamp was dented and the head-lamp glass was broken. The lorry sustained no damage. The final position of the scooter ridden by the plaintiff is slightly on the plaintiff's side of the road with its handle-bar more or less on or over the crown of the road. Broken glass is shown on the plan to be scattered over an area extending roughly in front of the scooter which came to rest on its left facing the opposite direction from whence it came. It was stressed by counsel for the defendant that the final position is not conclusive as to the point of impact.

The plaintiff's version is that he was riding a scooter along Telok Blangah Road towards the city on his own side of the road when he saw a man dashing out 3 feet into the road from a bus-stand on his near side. He sounded his horn, swerved towards his right to a distance of 6 to 7 feet from the near side kerb when a lorry coming in the opposite direction collided with him after overtaking a bus travelling in the same direction.

In his first report to the police, made 3 days later in hospital where he was lying seriously ill, he claimed that, on seeing a man suddenly dash-

A ing across the road from his left, he immediately applied his brakes and swerved towards the right but while doing so his scooter collided with a motor lorry which was coming from the opposite direction. He made no mention of the fact that that lorry had been overtaking a bus or that that lorry had come on to his side of the road. His explanation for this omission was that he was not feeling well.

B The defence version is that as the lorry was being driven along Telok Blangah Road towards Pasir Panjang, at a distance of about 2 to 3 feet from the near side kerb, the plaintiff's scooter **C** was first seen to be approaching from a distance of about 30 yards away travelling on its own side of the road but it subsequently moved obliquely or diagonally towards the lorry at a speed faster than the lorry. The defendant claimed that the scooter was wobbling and that subsequently he heard a bang behind his lorry and **D** concluded that there had been an impact between the scooter and his rear off-side wheel. He stopped his lorry within 2 to 3 feet after he heard the bang but did not get down because of the presence of some aggressive Malays and he drove off. He made a report to the police at 5.30 p.m. that evening, some 7 hours after the accident, in which all he says is that the scooter **E** came close to his lorry and collided with his off-side rear wheel. He did not give any explanation in that report for having failed to remain at the scene. He merely said that he drove off and that he did not know whether the rider had been injured or not.

F Both parties were agreed that it was raining at the time and that the road surface was wet.

It will be seen from the above account that, in their initial reports to the police, neither literally blamed the other. The plaintiff's report seems to support the defendant's evidence in **G** court and I have, therefore, given very careful thought to the question of the weight which I should attach to his present explanation of the presence of a bus coming from the opposite direction which he now says the defendant's lorry was overtaking. No mention of this was made **H** in the report nor is there any indication from the pleadings that his counsel was aware of its existence. It must be remembered that, although he was not well at the time he made his report and was in fact in quite a serious physical condition, his report does contain a fair amount of detail.

I While I have considerable sympathy for the gravity of his condition at the time he made his first report, I find it difficult to accept his version that the lorry was overtaking a bus at the relevant time and, in my opinion, this additional information should be regarded as an after-thought invented to improve his chances of success. I think that when he was in hospital

at the time he made his report it never occurred to him to blame the lorry for the simple reason that it was then, according to his reckoning, blameless. Even if the lorry had, in fact, been overtaking any such bus as now alleged, its off-side wheels would, at the most, have been slightly over the crown of the road which should have allowed the scooter, which was the only other vehicle on its side of the road, to travel past the lorry in safety. It seems to me quite clear that the collision took place because the plaintiff swerved to his right to avoid the pedestrian who dashed across his path. The plaintiff himself admitted in evidence that "If not for the man stepping out and my swerving to right to avoid him the lorry would not have hit me even if it was on its wrong side of the road".

From the final position of the scooter after the accident and the position of the broken glass, I am not satisfied that the point of impact was necessarily on the plaintiff's side of the road. Even if it was slightly on the plaintiff's side this would not, for reasons which will appear later, conclude the matter in the plaintiff's favour. It is more likely that the scooter swerved over the crown of the road and made contact with some part of the rear of the lorry in such a manner as to cause the scooter to swivel round to face the opposite direction. In the course of this the handle-bar came off and the scooter fell on its left side. The plaintiff sustained injuries to his left ankle, left leg and left thigh.

Apart from the plaintiff's version in court there is nothing in the evidence to indicate clearly that the lorry was on its wrong side of the road at the time of the collision. The only complaint one can make against the defendant is that he failed to remain at the scene but for this he has given an explanation. He also failed to make his report till some 7 hours later. I do not now consider, however, that this conduct on his part, which at first appeared to me to be indicative of some kind of guilt, necessarily connotes culpability on his part. As Lord Justice Greer said in the Court of Appeal in *Kirk v. Parker* ⁽¹⁾ at p. 132:

"... I take it that the learned judge was justified in deciding that the off-wheels of the lorry were probably a little over where the white line would have been. But that is not necessarily negligence if, by driving a car in that position, it is clear you will avoid any collision with vehicles coming in the opposite direction".

It is clear that the lorry would have avoided any collision with vehicles coming in the opposite direction even if its off-wheels had been on or slightly over the crown of the road. The sole cause of the collision was, therefore, the behaviour of the plaintiff in swerving to his right into the path of the lorry.

As Lord Justice MacKinnon said in the same case at page 134:

A "... There cannot, I think, be the slightest doubt, when all these facts have been investigated, that the truth about this collision was told in a few words by Master Kenneth Taylor after the accident happened, when he said to the policeman: 'My companion turned out on to his off-side and went into the side of the lorry coming in the opposite direction'. To my mind there is not a possibility of any doubt that that is really what happened".

B In the present case it was not another eye witness such as Master Kenneth Taylor who, after the collision, told the policeman that his companion turned out on to his off-side and went into the side of the lorry coming in the opposite direction. It was the plaintiff himself who said this to the police in his first report.

C As I have said earlier, I have carefully considered the fact that he was in hospital in a bad physical condition at the time of his report but I have no doubt that what he then said was a true account of what actually happened and that the defendant's lorry was not, at any time, in his path to such an extent as to affect his ability to make his way safely towards the city had he remained on his normal course.

D For these reasons I hold that the defendant was not negligent and the plaintiff's claim is accordingly dismissed with costs.

E *Claim dismissed.*

Solicitors: *P. T. K. Lau; Allen & Gledhill.*

WONG KONG v. YEE HUP TRANSPORT CO. & ORS.

F [O.C.J. (MacIntyre J.) May 26, 1966]

[Ipoh — Civil Suit No. 252 of 1964]

Negligence — Damages — Duty to mitigate loss — Loss of wife's income — Special damages.

Damages — Leg — ½" shortening — Knee flexion limited to 90°.

G The plaintiff was injured as a result of collision which was found to be caused by the negligent driving of the second defendant, who was employed by the first defendant. The plaintiff claimed general damages and also special damages for loss of earnings, special food, travelling expenses incurred by the plaintiff's wife in visiting him daily at the hospital and travelling expenses for himself. As a result of the accident the plaintiff suffered two permanent disabilities: he walked with a limp and he was unable to sit on his haunches.

H **Held:** (1) in the circumstances of this case the plaintiff was entitled to claim damages for loss of earnings at the rate of \$200 per mensem from the date of the accident to the date of trial, as his failure to resume his business after his medical treatment was not due to any wilful act of omission to minimise the damages but to circumstances beyond his control;

I (2) the plaintiff was in the circumstances of this case entitled to recover the travelling expenses incurred by his wife, as the fact that he was bedridden necessitated the presence of his wife in the hospital;

(3) taking all factors into consideration the damages would be assessed at \$12,600 for loss of prospective earnings and \$5,000 for pain and suffering.